



CITY OF BETHLEHEM
OFFICE OF THE CITY SOLICITOR

INTEROFFICE MEMORANDUM

To: Louise M. Kelchner, City Clerk
CC: The Honorable Robert J. Donchez, Mayor; W. Alexander Karras, Chief of Staff
From: Edmund J. Healy, Esquire, First Assistant City Solicitor
Re: proposed Permit Denial Ordinance
Date: May 16, 2019

As part of the City's broad strategy for reducing the undesirable effects of blight, the Administration requests Council to consider enacting the attached ordinance.

This ordinance would add Article 1719 to the Codified Ordinances of the City of Bethlehem. If enacted, this ordinance will empower the City staff and the Code Board of Appeals to deny permits to any property owner who have serious code violations or are delinquent on bills for taxes, sewer, water, or refuse collection on property anywhere in the Commonwealth of Pennsylvania. The ordinance sets forth certain limitations and appeal rights. The provisions of this ordinance implement powers granted to the City under the Third Class City Code, Optional Charter Law, and the Pennsylvania Neighborhood Blight Reclamation and Revitalization Act, 53 PS § 6101 et seq.

Edmund J. Healy, Esquire
First Assistant City Solicitor

BILL NO. XXX - 2019

ORDINANCE NO. 2019 - XXXX

AN ORDINANCE OF THE CITY OF BETHLEHEM,
COUNTIES OF LEHIGH AND NORTHAMPTON,
COMMONWEALTH OF PENNSYLVANIA, ADDING ARTICLE
1719 TO THE CODIFIED ORDINANCES TO IMPLEMENT CERTAIN
POWERS ENABLED BY THE PENNSYLVANIA NEIGHBORHOOD BLIGHT
RECLAMATION AND REVITALIZATION ACT, ACT 2010-90.

THE COUNCIL OF THE CITY OF BETHLEHEM HEREBY ORDAINS AS FOLLOWS:

SECTION 1. That Article 1719 of the Codified Ordinances of the City of Bethlehem titled "Grounds and Procedures for Denying Selected Permits and Authorizations for the Purpose of Promoting Property Revitalization" is hereby enacted as follows:

1719.00 Findings and purpose. Consistent with the Pennsylvania Neighborhood Blight Reclamation and Revitalization Act, 53 PS § 6101 et seq, the City Council of the City of Bethlehem does hereby find and declare as follows:

- (1) There are deteriorated properties located in all municipalities of this Commonwealth, including the City of Bethlehem, as a result of neglect by their owners in violation of applicable State and municipal codes.
- (2) These deteriorated properties create public nuisances which have an impact on crime and the quality of life of our residents and require significant expenditures of public funds in order to abate and correct the nuisances.
- (3) In order to address these situations, it is appropriate for the City of Bethlehem to deny certain governmental permits and approvals in order:
 - (i) To prohibit property owners from further extending their financial commitments so as to render themselves unable to abate or correct the code, statutory and regulatory violations or tax delinquencies.
 - (ii) To reduce the likelihood that other municipalities will have to address the owners' neglect and resulting deteriorated properties.
 - (iii) To sanction the owners for not adhering to their legal obligations to the Commonwealth and its municipalities, as well as to tenants, adjoining property owners and neighborhoods.

1719.01 Definitions. The following words and phrases in this ordinance are defined as follows:

- A. "Applicant" shall mean the owner of the subject real property as determined by the current deed recorded in the Office of Recorder of Deeds for the county in which the

real property is located or any person acting under the direction or with the permission of the owner.

- B. "Board" shall mean the Zoning Hearing Board, City Planning Commission, any other body granted jurisdiction to render decisions in accordance with the Pennsylvania Municipalities Planning Code, 53 PS §10101 et seq, and any appropriate board(s) of the City having jurisdiction to grant approvals, or hear appeals from denials of, permits pertaining to building, housing, property maintenance, fire, health or other public safety ordinance or code of the City related to the use or maintenance of real property. The term "board" shall not include the Board of Historical Architectural Review acting in accordance with Article 1713 or the Historic Conservation Commission acting in accordance with Article 1714 of the Codified Ordinances.
 - C. "Code" or "municipal code" shall mean a building, housing, property maintenance, fire, health or other public safety ordinance, related to the use or maintenance of real property, enacted by a municipality. The term does not include a subdivision and land development ordinance or a zoning ordinance enacted by a municipality.
 - D. "Delinquent" with respect to taxes shall mean amounts which remain unpaid after December 31 of each calendar year for all taxing districts in the manner governed by the Real Estate Tax Sale Law, 72 Pa. Stat. Ann. § 5860.101 et seq. With respect to water or sewer, this term shall mean amounts which remain unpaid after 20 days from the date billed in accordance with Articles 913.03(a) and 927.06 of the Codified Ordinances, unless provided otherwise by law. This term with respect to tax, water, sewer or refuse shall also include any unpaid penalties, interest, and costs due in the manner authorized by the Municipal Claim and Tax Lien Law, 53 PS § 7101 et seq, regardless of whether or not liens have been filed.
 - E. "Public nuisance" shall mean any property which, because of its physical condition or use, is regarded as a public nuisance at common law or has been declared by the appropriate official a public nuisance in accordance with a municipal code.
 - F. "Property" shall mean any vacant or improved real property situate in the Commonwealth of Pennsylvania.
 - G. "Serious violation" A violation of a State law or a code that poses an imminent threat to the health and safety of a dwelling occupant, occupants in surrounding structures or a passersby.
 - H. "Substantial step" shall mean an affirmative action as determined by a property code official or officer of the court on the part of a property owner or managing agent to remedy a serious violation of a State law or municipal code, including, but not limited to, physical improvements or repairs to the property, which affirmative action is subject to appeal in accordance with applicable law.
- 1719.02 Applications for Municipal Approvals. All applications to any City bureau or board for any building and/or occupancy permit or approval, i.e. other than a decision on the substantive validity of a zoning ordinance or map or curative amendment, shall be

amended to require the following verified information in writing from an applicant subject to the penalties set forth in 18 PaCS §4904:

- A. Owner information. If the owner is an individual or a combination of individuals or partnership, the name of all known owners and their respective home addresses shall be provided. If the owner is a trust, corporation, limited liability partnership, limited liability company, or similar entity, its registered office and principal place of business, type of entity, in what state it was formed, and whether the entity has qualified to do business as a foreign entity in Pennsylvania by filing with the Corporation Bureau of the Pennsylvania Department of State under title 15 of the Pennsylvania Consolidated Statutes shall be provided. The home address of at least one responsible trustee, officer, member, or limited partner shall be also be included.
- B. Property disclosure. The owner shall provide a list of all properties in the Commonwealth of Pennsylvania owned by owner which meet one or more of the following conditions:
 - 1. upon which there is a final and unappealable tax, water, sewer or refuse collection delinquency on account of the actions of the owner and no such taxes or charges are under appeal or otherwise contested through a court or administrative process. To the extent any property was the subject in the past 12 months of any appeal or contest, the applicant shall identify the nature of the appeal or contest, the court or administrative body before whom the matter was considered and the date and disposition rendered by the court of administrative body; and/or
 - 2. upon which there is a serious violation of State law or a code and the owner has taken no substantial steps to correct the violation within six months following notification of the violation and for which fines or other penalties or a judgment to abate or correct were imposed by a magisterial district judge or municipal court, or a judgment at law or in equity was imposed by a court of common pleas. To the extent any property was the subject in the past 12 months of any appeal or contest, the applicant shall identify the nature of the appeal or contest, the court before whom the matter was considered and the date and disposition rendered by the court.

1719.03 Right to Deny Permit or Approval; Revocation. Pursuant to 53 PaCS § 6131, any City employee or board with authority to issue any building and/or occupancy permit or approval, i.e. other than a decision on the substantive validity of a zoning ordinance or map or the acceptance of a curative amendment, may, in the following circumstances, deny issuing such municipal permit or approval if the applicant is the owner of real property in any municipality of the Commonwealth of Pennsylvania:

- A. upon which there is a final and unappealable tax, water, sewer or refuse collection delinquency on account of the actions of the owner and no such taxes or charges are under appeal or otherwise contested through a court or administrative process. The denial of a permit or approval on this ground is not authorized, however, if the

delinquency amounts due for taxes, water, sewer or refuse collection charges are under appeal or otherwise contested through a pending court or administrative process; or

- B. upon which there is a serious violation of State law or a code and the owner has taken no substantial steps to correct the violation within six months following notification of the violation and for which fines or other penalties or a judgment to abate or correct were imposed by a magisterial district judge or municipal court, or a judgment at law or in equity was imposed by a court of common pleas. The denial of a permit or approval on this ground is not authorized, however, if the property owner provides proof to the relevant City employee or board with authority to issue the requested permit or approval that the judgment, order or decree is subject to a stay or supersedeas by an order of a court of competent jurisdiction or automatically allowed by statute or rule of court and such stay or supersedeas remains in effect.
- C. The City shall not deny a municipal permit to an applicant if the municipal permit is necessary to correct a violation of State law or a City ordinance or code relating to building, housing, property maintenance, fire, health or public safety in connection with the use or maintenance of real property in the City.
- D. The City may, in addition to any other ground for revocation authorized by law or ordinance, revoke a permit or approval in the event the City ascertains that the information provided to the City during the application process or board hearing was materially incomplete, inaccurate, and/or misleading.

1719.04 Notice of Denial. If a municipal permit or approval is denied under this ordinance, then such City employee or board shall promptly communicate the denial in writing to the applicant and, for each parcel cited as a basis for the denial, set forth the basis of the denial, the street address, municipality, and county in which the property is located and, if applicable, the court and docket number. The denial shall also state that the applicant may request a letter of compliance from the appropriate State agency, municipality or school district which hosts the property upon which the denial is based in a form specified by such entity.

1719.05 Form of Letter of compliance; reliance.

- A. All municipal permits denied in accordance with this ordinance may be withheld until an applicant obtains a letter from the appropriate State agency, municipality or school district indicating the following:
 - 1. the property in question has no final and unappealable tax, water, sewer or refuse delinquencies;
 - 2. the property in question is now in compliance with State law and municipal codes relating to building, housing, property maintenance, fire, health or other public safety ordinance, related to the use or maintenance of real property, enacted by a municipality; or

3. the owner of the property has presented, and the appropriate State agency or municipality has accepted, a plan to begin remediation of a serious violation of State law or a code. Acceptance of the plan may be contingent on:
 - (a) beginning the remediation plan within no fewer than 30 days following acceptance of the plan or sooner, if mutually agreeable to both the property owner and the municipality.
 - (a) completing the remediation plan within no fewer than 90 days following commencement of the plan or sooner, if mutually agreeable to both the property owner and the municipality.
- B. In the event that the appropriate State agency, municipality or school district fails to issue a letter indicating tax, water, sewer, refuse, State law or code compliance or noncompliance, as the case may be, within 45 days of the request, the property in question shall be deemed to be in compliance for the purpose of this section. The applicant shall bear the burden of proving to the City that the request was made on the form specified, if any, by and to the appropriate State agency, municipality or school district at least 45 days prior to the application to the City for a municipal permit or approval.
- C. Letters of compliance authorized under this section shall be verified by the appropriate City employee(s) before issuing a municipal permit or approval to the applicant.

1719.06 Special rules.

- A. In the case where an application for municipal permit is made jointly by two or more persons, or where the owner consists of a person in combination with one or more another person, trust, corporation, limited liability partnership, limited liability company, or similar entity, and at least one of the joint applicants or owners owns property meeting the requirements of Section 2.B of this ordinance, the disclosure required by Section 2 will be made for each joint applicant or owner. The City's rights to deny and/or revoke a municipal permit or approval under Section 3 of this ordinance may be exercised if any of the joint applicants or owners are the owners of property in the Commonwealth of Pennsylvania meeting the requirements of Section 3.A or 3.B. In such instances, however, the City may give the joint applicants or owners the opportunity to make payments to resolve any delinquencies, correct code violations, and/or enter into a remediation agreement with the City under Section 5.A.3 of this ordinance, following which, if such payments are made and/or the remediation plan is successfully completed, the City shall issue the municipal permit or approval.
- B. Where property is inherited by will or intestacy, the City shall give the devisee or heir the opportunity, in order to avoid subjecting the devisee's or heir's other properties to denial of permits and approvals, to make payments to resolve any delinquencies, correct code violations, and/or enter into a remediation agreement with the City under Section 5.A.3 of this ordinance, following which, if such payments are made and/or the

remediation plan is successfully completed, the City shall issue the municipal permit or approval.

- C. Municipal permits or approvals may be denied by a board in accordance with the requirements of this section to the extent that approval of the municipal permit is within the jurisdiction of the board.
- D. In any proceeding before a board other than the governing body of the municipality, the municipality may appear to present evidence that the applicant is subject to a denial by the board in accordance with this section.

1719.07 Appeal rights preserved. The denial of a municipal permit or approval under this ordinance shall be subject to the provisions of 2 PaCS Chapter 5 Subchapter B (relating to practice and procedure of local agencies) and Chapter 7 Subchapter B (relating to judicial review of local agency action) and the Pennsylvania Municipalities Planning Code, 53 PS §10101 et seq.

1719.08. In personam actions; attachment of all property authorized. Pursuant to 53 PaCS §§ 6111-6112, for real properties upon which serious violation of a code exists for six months following the receipt of an order to correct the violation and such order is not the subject of a pending appeal to a board or court of competent jurisdiction, or the owner has not corrected a condition which causes the property to be regarded as a public nuisance, the City may initiate an in personam action at law or equity to recover an amount equal to any penalties previously imposed against the owner and any costs of remediation lawfully incurred by or on behalf of the City to remedy any code violation. The initiation of any in personam action shall not bar successive in personam actions for penalties imposed or costs of remediation incurred subsequent to the filing of any personam action. In the event such in personam action(s) results in a judgment, decree or order is entered by a court of competent jurisdiction, the City may proceed to enforce such judgment, decree or order by seeking attachment of and execution against any assets of the owner wherever they may be found.

1719.09. Preservation of Remedies. Nothing in this ordinance limit, abridge, or alter the remedies or penalties available to the City existing at common law or by statute.

SECTION 2. That all Ordinances and parts of Ordinances inconsistent herewith be, and the same are hereby repealed.

Sponsored by: _____

PASSED finally in Council on this _____ day of _____, 2019.

President of Council

ATTEST:

City Clerk

This Ordinance approved on this _____ day of _____, 2019.

Mayor